

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CIVIL ACTION NO. 1:11cv0244 (WOB-MRM)

JAMES M. FLEMING

PETITIONER

VS.

ORDER

ROBIN KNAB, WARDEN,
Chillicothe Correctional
Institution

RESPONDENT

This matter is before the Court on the Report and Recommendation (Doc. #16) of the Magistrate Judge, and having considered de novo those objections filed thereto by petitioner (Doc. #17), and the Court being sufficiently advised,

IT IS ORDERED that the objections be, and they hereby are, **overruled**; that the Report and Recommendation be, and it hereby is, **adopted** as the findings of fact and conclusions of law of this Court; that the motion of petitioner for default and for summary judgment (Doc. #8) be, and it hereby is, **denied**; that motion of petitioner to require respondent to amend pleadings (Doc. #14) be, and it hereby is, **denied as moot**; that respondent's motion to dismiss (Doc. #6) be, and it hereby is, **granted**; that the petition for writ of habeas corpus be, and it hereby is, **denied**; that this matter be **dismissed**, without prejudice, for failure to state a claim upon which relief can be

granted under 28 U.S.C. § 1651. A separate Judgment shall enter concurrently herewith.

IT IS FURTHER ORDERED that, in light of the reasons stated in the Report and Recommendation of the Magistrate Judge, any appeal would be objectively frivolous, the Court certifies any leave to appeal *in forma pauperis* should be denied.

This 7th day of February, 2012.



Signed By:

William O. Bertelsman *WOB*
United States District Judge